IN THE HIGH COURT OF ANDHRA PRADESH
AT HYDERABAD

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W.P.No.16427 of 2007

Dt.26-09-2007

Between:
D.Pratap Naidu

..Petitioner

and

The Collector & District
Magistrate, Ananthapur and others.

..Respondents

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THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY
and
THE HONOURABLE SRI JUSTICE
P.SWAROOP REDDY

W.P.No.16427 of 2007

Order: (Per Hon'ble Sri Justice ***A.Gopal Reddy***)

By means of filing this writ petition under Article 226 of the Constitution the petitioner, who is the cousin of the detenu, seeks to challenge the order of detention dated 16-06-2007 passed by the Collector-cum-District Magistrate, Ananthapur District—1st respondent in exercise of powers conferred under Section 3(1) & 3(2) r/w 2(a) and (b) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short "the Act 1/1986") by directing the respondents to produce Boya Nagabhushanam @ Busi—alleged detenu and order for his release.

2. Boya Nagabhushanam @ Busi alleged to be repeatedly indulging in illegal possession, transportation and sale of illicitly distilled arrack sachets in violation of the provisions of A.P. Excise Act, 1968 and A.P. Prohibition Act, 1995 and acted in a manner prejudicial to the maintenance of public order.

3. The order of detention is to prevent further from indulging in such dangerous activities which is injuries to public health and prejudicial to the maintenance of public order for a period of three months from the date of detention.

4. The grounds of detention as supplied to the petitioner in short are as follows:

(i) On 23-05-2006 at about 5.45 A.M. the Prohibition & Excise Inspector, Guntakal along with staff conducted raids and found the detenu along with Boya Mallikarjuna near Durgamma temple, Tilaknagar, Guntakal while transporting 1800 illicit arrack sachets in 6 polythene bags 300 in each bag in yellow coloured auto having no registration number. On seeing the Inspector and the staff in uniform the detenu along with auto driver ran away leaving auto and six bags containing 1800 illicit arrack sachets. The Inspector seized the auto and arrack sachets and after drawing samples for chemical analysis, registered a case in Cr.No.72/06/07 under section 7(A) r/w 8(e) of A.P. Prohibition Act, 1995 against the detenu and auto driver and sent the samples to chemical examiner for analysis who opined that *the samples are diluted arrack containing sediment, unfit for human consumption and injurious to health* vide C.E.No.151/2006-07 dated 02-08-2006 and during the course of investigation A1—Boya Mallikarjuna was arrested on 31-05-2006. The Prohibition and Excise Sub-Inspector, Guntakal obtained P.T. warrant and arrested the detenu and subsequently he was released by the Judicial First class Magistrate, Guntakal on 20-12-2006. After completion of investigation, the Prohibition & Excise Inspector, Guntakal filed a charge sheet in C.C.No.49/2007.

(ii). On 20-07-2006, the Inspector of Police, Guntakal Urban who is conducting town patrol and vehicular check along with I Town Sub-Inspector of Police, Guntakal and their staff on Kammakottala—porter lane in Guntakal town found the detenu along with co-accused while

shifting 9000 illicit arrack sachets packed in 30 polythene bags from a commander jeep bearing No.ADY 9936 into an auto bearing No.AP 12 T 3903. On seeing the police in uniform, out of 5 accused the detenu and Boya Mallikarjuna—A2 absconded from the scene of offence and the police arrested the other accused. On enquiry, Boya Ramakrishna —A3 revealed that he has been working under the detenu for the last two years in transportation of arrack sachets from Karnataka State to Guntakal (Andhra Pradesh) on daily wage of Rs.200 per day. He further disclosed that the detenu and Boya Mallikarjuna used to transport arrack sachets two to three times in a week in another jeep belonging to one Sale Paramesappa—A5. On 19-07-1996 A5 accompanying the detenu along with three others went to Bellary, where the detenu purchased 9000 arrack sachets by paying Rs.27,000/- and returned on 20-07-2006 at 3.45 p.m. A4 also supported the said contention. A5 stated that he purchased the jeep for Rs.30,000/- and after repairing he was using it for illegal transportation of arrack sachets. The chemical examiner who analyzed the samples in C.E.No.161/2006 dated 10-08-2006 opined that the samples are "*diluted arrack containing sediment, unfit for human consumption and injurious to health*". The detenu surrendered before the Judicial First Class Magistrate, Guntakal on 24-07-2006 and has been released on bail on 20-12-2006. After completion of investigation a charge sheet was filed on 06-01-2007 vide C.C.No.9/2007, which is under trial.

(iii). On 23-11-2006, during the raids conducted by the Inspector of Police, Guntakal, Sub-Inspector of Police, I Town Police Station, Guntakal along with staff on Guntakal-Alur Road, near Hindu burial ground, they found one tractor bearing registration No.ATA 8712 with trally bearing No.ATA 8713 coming from Alur with red soil load with

three persons. One was driving the tractor while two persons were sitting on the red soil in the trally. Out of the two persons sitting in the trally, the raid party identified one of them as detenu. On suspicion when the raid party tried to detain the tractor, the detenu along with two others tried to ran away and staff surrendered and detained them. On removing top layer of the red soil, they found 70 bags each containing 300 arrack sachets totaling 21000 illicit arrack sachets. The detenu stated that out of the cases booked against him in Uravakonda and Guntakal Prohibition and Excise Stations some cases were disposed of by the Lok Adalat and some are pending trial. The detenu stated that he purchased the tractor and trailer from Bellary Town and after spending necessary amount for repairs he along with others went to Bellary, purchased illicit arrack sachets packed in 70 bags, covered the said bags with red soil and transported the same. After registration of the crime, the Inspector of Police laid the charge sheet in Cr.No.34/2007. The Sub-Inspector of Police after obtaining PT warrant produced the detenu before the Judicial First Class Magistrate, Gooty on 28-05-2007 and remand was extended upto 11-06-2007 and the bail application of the detenu was dismissed twice by the Judicial First Class Magistrate.

(iv). On 19-02-2007 the Sub-Inspector of Police, I Town Police Station, Guntakal conducted raids along with staff and arrested one Bandari Nagabhushanam while shifting 8100 illicit arrack sachets in 27 polythene bags from a white TATA Sumo bearing No.KA 02-M-3679 into an auto bearing No.AP11U-1659, and when the detenu, Nagaraju—A3, Boya Mallikarjuna @ Malli—A4 were identified by the police, they managed to escape from the scene of offence. After registering the case in Cr.No.8/2007 under Section 7(A) r/w 8(e) of

A.P. Prohibition Act necessary charge sheet was filed and investigation is under progress. The detenu was remanded to judicial custody on 28-05-2007. The chemical examiner in his report in C.E.No.459/2006-2007 dated 15-03-2007 opined that the samples are "*diluted arrack containing sediment, unfit for human consumption and injurious to health*".

(v). On 02-04-2007 at 9.30 A.M., the Prohibition and Excise Inspector and Sub-Inspector, Guntakal along with police constables of I Town Police Station, Guntakal while conducting raids at Peerlachavadi found one women—Boya Mangamma (A1) sitting with one bag. On suspicion the staff surrounded her and verified the bag, found 100 arrack sachets in it. She stated that arrack sachets were supplied by the detenu, who is no other than her son, for selling the same at Rs.8/-. A case was registered in Cr.No.5/2007-08 under Section 7(A) r/w 8(e) of A.P. Prohibition Act, 1995 against her. The chemical examiner in his report vide C.E.No.95/2007-08 dated 26-05-2007 opined that "*the samples are diluted arrack containing sediment, unfit for human consumption and injurious to health"*. The detenu was produced before the Judicial First Class Magistrate, Gooty on PT warrant and the remand period was extended upto 11-06-2007. Necessary charge sheet was filed before the Judicial First Class Magistrate, Guntakal in C.C.No.92/2007 who remanded the detenu while dismissing the bail application.

(vi). On 22-05-2007 the Assistant Prohibition and Excise Superintendent, Prohibition and Excise Sub-Inspector, D.T.F. Kurnool while conducting route watch at Medchal cross roads intercepted one TATA Sumo AP02-E-4446 and examined the jeep and found 32 bags with 300 arrack sachets in each totaling 9600 arrack sachets which

were transported from Bellary to Guntakal via Kodumur, Alur. On enquiry three persons sitting in the TATA sumo stated their names as Boya Nagabhushanam—detenu and two others of Bellary of Karnataka State. They revealed that the detenu transporting Karnataka arrack sachets from Bellary to Guntakal via Alur. A case in Cr.49/07-08 was registered under Section 7(A) r/w 8(e) of the A.P. Prohibition Act, 1995 against the detenu. The chemical examiner in his report vide C.E.No.204/07 opined that "*the samples are diluted arrack and they are injurious to health and unfit for human consumption*" as such detention order was made and was served on him in jail.

5. Thus, the 1st respondent—detaining authority held that as the detenu was already in judicial remand, it is very difficult to secure if he is enlarged on bail. As already faced by police and excise officials, to affect arrest against him in 'involved cases' continuing the bootlegging activities unabated, there is no other go except to issue detention order as all his activities are dangerous to public health and prejudicial to the maintenance of public order, and thereby to prevent further indulging in bootlegging activity by serving the detention order in jail. The order of detention passed by the Collector and District Magistrate on 16-06-2007 detaining Boya Nagabhushanam @ Busi has been approved by the Government in G.O.Rt.No.3595 dated 25-06-2007 under sub-section (3) of Section 3 of the Act 1/1986. The Advisory Board constituted under Section 9 the Act 1/1986 reviewed the case of the detenu on 27-07-2007 and after hearing the detenu opined that "there is sufficient cause for the detention of the detenu". The State Government after due consideration of the report of the Advisory Board and the material available on record in exercise of the powers conferred under sub-Section (1) of Section 12 r/w Section 13 of

the Act 1/1986 confirmed the said order of detention and directed the detention order shall be continued for a maximum period of 12 months from the date of his detention i.e. 18-06-2007.

6. Learned counsel for the petitioner submitted that as on the date of passing the detention order the detenu is in jail and his bail applications were dismissed twice, therefore apprehension that the detenu will continuously indulge in boot legging activities does not arise. The material, which was referred by the detaining authority, has not been supplied to the detenu for effectively making the representation. The documents, which were relied upon by the detaining authority for passing the detention order, was not supplied within the time stipulated under the Act 1/1986. The said objection was raised in his representation dated 02-07-2007 given to the Advisory Board. Therefore, the entire detention order is liable to be set aside. He placed reliance on the following judgments:

1.***RAMESHLAL JAIN v. NAGINDER SINGH RANE***[1]

2. ***ICCHUDEVI CHORARIA v. UNION OF INDIA***[2]

7. Per contra, learned Advocate General while sustaining the detention order contended that the detenu in spite of ban on manufacturing and selling of arrack in the State and also import and export from out side the State even after enlargement on bail continued to indulge in clandestine activities of transporting illicit liquor from Karnataka to Andhra Pradesh and involving bootlegging operations. As consumption of which is injudicious to public health, to prevent such activities detention order has been made by the detaining authority. It was further contended that detention order could not become invalid merely because the detenu was in jail at the time of

passing the order by placing reliance on ***ALIJAN MIAN v. DISTRICT MAGISTRATE, DHANBAD***[3]. Under Section 8 of the Act 1/1986 the grounds of order of detention have been disclosed along with all necessary documents. In view of the same, detention order cannot be said as illegal.

8. In view of the above submissions, the point that arises for consideration is:

> "Whether the detention order passed by the detaining authority as approved by the Government in G.O.Rt.No.3595 dated 25-06-2007 and confirmed in G.O.Rt.No.4424 dated 02-08-2007 can be sustainable."

9. Before considering the above submissions, it is relevant to note the provisions under the Act 1/1986.

10. Section 3 (1) of the Act 1/1986 confers power on the Government to make orders detaining certain persons with a view to prevent from acting in any manner prejudicial to the maintenance of public order. Sub-section (2) of Section 3 deals with delegation of powers by the State Government and provides if, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub section (1), exercise the powers conferred by the said sub section: Provided that the period specified in the order made by the Government under this sub section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such

order to extend such period from time to time by any period not exceeding three months at any one time. When any order is made under this section by an officer mentioned in sub section (2), he shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the Government. Section 8 of the Act 1/1986 envisages the grounds for ordering detention to be disclosed to persons affected by the order. Section 9 contemplates constitution of Advisory Board. Section 10 contemplates where a detention order has been made under the Act, the Government shall within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by them under Section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of Section 3. Under Section 12(1) after Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period specified in Section 13 as they think fit. Section 13 provides maximum period of detention when it has been confirmed under Section 12 shall be twelve months from the date of detention.

11. From a reading of the provisions of the Act 1/1986, the object of detention under Section 3 of the Act 1/1986 is not to punish but to prevent commission of offence. Sub-section (1) of Section 3 of the Act

1/1986 allows the detention of person only if the appropriate detaining authority is satisfied that with a view to prevent such person from carrying on any of the offensive activities enumerated therein, it is necessary to detain such person. The satisfaction of the detaining authority is not a subjective one based on his beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the influence of such likelihood being drawn from objective data.

12. As seen from the order of detention, the detaining authority mentioned six crimes registered against the detenu, in one Cr.No.72 of 2006 he was enlarged on bail and while he continued to distribute the illicit arrack sachets five more cases were registered and accordingly the order of detention under Section 3(1) of the Act 1/1986 has been passed for a period of three months from the date of detention. Through G.O.Rt.No.3595 General Administration dated 25-06-1997 the Government accorded approval in support of order of detention made by the Collector and District Magistrate, Ananthapur detaining Boya Nagabhushanam. When the matter is placed before the Advisory Board, who in its report dated 27-07-1997 opined that “there is sufficient cause for the detention of the detenu—Boya Nagabhushanam”. After considering the report of the Advisory Board the Government in G.O.Rt.No.4424 dated 02-08-2007 in exercise of powers under sub-section (1) of Sec. 12 confirmed the order of detention, directing the detenu to be continued for maximum period of 12 months from the date of detention i.e. 18-06-2007. While confirming the order of detention, the Government referred G.O.Rt.No.2343 dated 02-05-2006, specifying that the Government accorded approval to the said detention order under sub-section (3) of Section 3

of the Act 1/1986. Curiously the G.O. referred to above do not pertain to the alleged detenu but the same pertains to approval of detention order passed against one Yerikala Ramanjaneyulu s/o Yerikala Naganna r/o Thyagaraja Nagar, Guddam, Hindupur Town, Ananthapur District, where the Government accorded approval under sub-section (3) of Section 3 for the detention of said Ramanjaneyulu in G.O.Rt.No.2343 dated 02-05-2007, which itself shows total non-application of mind of the Government in passing the order, continuing the detention for a maximum period of 12 months against Boya Nagabhushanam.

13. Justice Patanjali Sastri speaking for the bench in ***MAKHAN SINGH TARSIKKA v. STATE OF PUNJAB***[4] categorically held that the very mention of period of detention in the original order under Section 3(1) of the Prevention of Detention Act renders the order bad and illegal as the specified period might prejudice the case of the detenu when it goes for consideration before the Advisory Board. The same has been approved by the Constitutional Bench ***DATTATRAYA v. STATE OF BOMBAY***[5].

14. The Supreme Court in ***HARPREET KAUR v. STATE OF MAHARASHTRA***[6] while considering the identical provision of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 held that proviso to Section 3(2) has nothing to do with period of detention of detenu, which deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is

necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the. State Government to order detention of a person as provided by sub-section (1), then the State Government may, by an order in writing direct that during such period as may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers of the State Government as conferred by sub-section (1). The proviso to sub-section (2), only lays down that the period of delegation of powers, specified in the order to be made by the State Government under sub-section (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) shall not in the first instance exceed three months. The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act 1/1986 which lays down that a person may be detained in pursuance of any detention order made under the Act 1/1986, which has been confirmed under Section 12 of the Act 1/1986.

15. The Apex Court repeatedly held that law permitting preventive detention must be meticulously followed both substantively and procedurally by the detaining authority.

(**See** 1.RAJESH GULATI v. GOVERNMENT OF NCT OF DELHI (2002) 7 SCC 129
2. ICCHUDEVI CHORARIA v. UNION OF INDIA (AIR 1980 SC 1983)
3. VIJAY NARAIN SINGH v. STATE OF BIHAR (AIR 1984 SC 1334)
4. HEM LALL LBHANDARI v. STATE OF SIKKIM (AIR 1987 SC 762)
5. AYYA v. STATE OF U.P. (AIR 1989 SC 364)

16. In the case on hand the detaining authority's satisfaction consisted of three parts—the detenue was arrested in Cr.No.72/2006-

20076 and eventually had been released on bail by the Judicial First Class Magistrate, Guntakal, in which charge sheet has also been filed; it is difficult to apprehend him again to detain as a preventive measure for a period of three months as his activities are injuries to health and prejudicial to maintenance of public order for a period of three months; and (3) that he should be detained for a period of three months.

17. In view of the same, without going into the other contentions raised by the learned counsel for the petitioner, we are satisfied that the detention order passed by the Collector & District Magistrate, detaining the detenu—Boya Nagabhushanam 'bootlegger' within the meaning of Section 2 (b) of the Act 1/1986 and specifying the period of detention for a period of three months from the date of detention order prejudice the case of detenu, when the matter has been considered by the Advisory Board on reference, and its confirmation by the Government and the writ petition has to succeed on this ground alone.

18. In the result, writ petition is allowed and the order of detention in Rc.No.78/2007/B dated 16-06-2007 is set aside and

the detenu, namely, Boya Nagabhushanam @ Busi is set at liberty forthwith.

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A.GOPAL REDDY, J.

P.SWAROOP REDDY

26-09-2007

Murthy/kmr

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[1] 2006 SCC (Crl.) 593 = (2006) 1 SCC 294

[2] AIR 1980 SC 1983

[3] AIR 1983 SC 1130 = (1983) 4 SCC 301

[4] AIR 1952 SC 27

[5] AIR 1952 SC 181

[6] AIR 1992 SC 979